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Constitutional Law--Full Faith and Credit Doctrine--Extra-Territorial Validity of Divorces (In re Holmes Estate, 291 N.Y. 261 (1943))

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and others.[10] All authorities agree that a statute is void which authorizes a final adjudication of insanity and commitment, without making some provision by which the person himself be given notice and an opportunity to be heard.[11]

J. E. P.

CONSTITUTIONAL LAW—FULL FAITH AND CREDIT DOCTRINE—EXTRA-TERRITORIAL VALIDITY OF DIVORCES.—The respondent, Ernest Davis, and his first wife were married and domiciled in New York. Several years afterwards, he obtained a divorce in Nevada upon grounds of extreme cruelty, without having personally served his spouse. The very day that the decree was granted, he married the deceased, Anna Holmes, and returned with her to New York. His first wife then sued for and subsequently obtained in New York, a divorce on the ground of Davis' adultery with the deceased, New York not recognizing the Nevada divorce because its court lacked personal jurisdiction.[1] The appellant relied upon the New York decree to prove that the respondent had never been legally married to her sister, the deceased, because they never remarried after the New York decree was granted, and therefore were not husband and wife, but merely two persons living together. As such, Davis would not be entitled to the letters of administration of the Holmes estate. The lower court reversed the order of the Niagara County Surrogate, denying the letters of administration to the respondent. *Held,* affirmed. In view of the most recent decision of the United States Supreme Court in *Williams and Hendrix v. North Carolina,*[2] the court gave full faith and credit to the Nevada divorce,[3] declaring that the finding of the New York court was not binding in this proceeding, and stating broadly that the decree of a sister state is not open to collateral attack by a third party. In re *Holmes Estate,* 291 N. Y. 261, 52 N. E. (2d) 424 (1943).

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[10] State of Minn. *ex rel.* Pearson v. Probate Court of Ramsey County, 309 U. S. 270, 60 Sup. Ct. 523, 84 L. ed. 744 (1940); Maxwell v. Maxwell, 189 Iowa 7, 177 N. W. 541 (1920).

[11] Barry v. Hall, 98 F. (2d) 222, 68 App. D. C. 350 (App. D. C. 1938); Ussery v. Haynes, 344 Mo. 530, 127 S. W. (2d) 410 (1939); *Ex parte* Allen, 82 Vt. 365, 73 Atl. 1078, 26 L. R. A. (N.S.) 232 (1909).

[1] Hubbard v. Hubbard, 228 N. Y. 81, 226 N. E. 508 (1920); McGown v. McGown, 164 N. Y. 558, 58 N. E. 1089 (1900); Matter of Kimball, 155 N. Y. 62 (1898); Hoffman v. Hoffman, 46 N. Y. 30 (1871); Kerr v. Kerr, 41 N. Y. 272 (1869); Jackson v. Jackson, 1 Johns. 424 (N. Y. 1806). In these cases, judgments of divorce procured by constructive service were held invalid.

[2] 317 U. S. 287, 87 L. ed. 279 (1942). Petitioners were married to, and domiciled with, their respective spouses in North Carolina. Together they left for Nevada, where, after fulfilling the forty-two day residence requirement, they obtained divorces on the ground of cruelty, having served their spouses by publication and substituted service only. They were then married, returned to North Carolina, and proceeded to set up housekeeping. The authorities of

When the conclusions of the *Williams* case were made public, legal scholars and learned jurists predicted a wave of widespread criticism and change in the rulings by the various state courts.[4] The effect of this Supreme Court ruling has in many ways proved to be revolutionary, perhaps not so much as to its text, as to its dicta.[5] As can be seen in the case before us, New York has for the first time in its history, unconditionally given full faith and credit to a Nevada decree.[6] Citing copiously from the *Williams* case, the majority opinion paves the way towards a more lax divorce law. Today a party, by going to Nevada and fulfilling its statutory residence requirement, may within six weeks become absolutely divorced without having served his spouse personally. The old doctrine of the New York courts designed to protect the stay-at-home spouse from an *ex parte* migratory divorce, has now been overruled completely.[7] In reliance on the *Williams* ruling, the court disposed of the question of *bona fide* residence as a pre-requisite for jurisdiction of the parties, stating that it is necessary to assume that the respondent had a *bona fide* residence in Nevada, and not that the Nevada domicile was a sham.[8] The court added that the question will continue to be an open one until the United States Supreme Court makes a positive statement as to whether a conclusion of a *bona fide* domicile by the court of one state can be declared invalid in a court of a sister state.[9] Furthermore, it held that in this instance, it must, as in many cases before this, assume the existence of the presumption, in the absence of evidence to the contrary, and so deem that the court of the other state had jurisdiction to render the judgment, though doubtless the judgment's validity could be impeached by extrinsic

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North Carolina arrested them on the charge of bigamy. They pleaded the Nevada decree and asked that it be given full faith and credit, which the North Carolina court refused. On appeal to the United States Supreme Court, the decision of the state court was reversed.

[3] U. S. CONST. Art. IV, § 1 provides that "full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state." In *Davis v. Davis*, 305 U. S. 32, 83 L. ed. 26 (1938), *Loughran v. Loughran*, 292 U. S. 216, 78 L. ed. 1219 (1933), and *Atherton v. Atherton*, 181 U. S. 155, 45 L. ed. 794 (1901), courts held that a state is obliged to give full faith and credit to a foreign decree in the absence of fraud.

[4] Tapley, *Is "Full Faith" Divorced from Divorces* (1943) 17 ST. JOHN'S L. REV. 97. *See* Conway, J., dissenting in the principal case.

[5] Williams v. North Carolina, cited *supra* note 2.

[6] See note 1 *supra*. Even after the *Williams* decision, *Matter of Bingham's Estate*, 265 App. Div. 463, 41 N. Y. S. (2d) 180 (1943), held invalid Nevada divorce obtained by constructive service.

[7] Haddock v. Haddock, 201 U. S. 562, 50 L. ed. 867 (1906). In an action for separation in New York, the defense of a previous divorce obtained in Connecticut was invalid where the wife was served by constructive notice only. The Supreme Court upheld the New York view that an action for divorce was one between the parties, and that personal service upon a New York resident is necessary to obtain jurisdiction over him.

[8] See note 5 *supra*.

[9] *See* principal case at 268.

evidence.[10] It refused to recognize a third party's right to set up such evidence,[11] yet the dissenting opinion makes it clear that New York has previously sustained such attack by persons who were not directly connected with the action.[12] It is believed that this controversial subject will continue to be the basis of much court litigation. No sooner had the Court of Appeals rendered its opinion when, in a lower court in New York State, a similar problem arose. The lower court refused to follow this decision but preferred to abide by the old weight of authority, declaring that the Nevada decree was invalid upon the contention that the domicile established was not *bona fide* and that therefore it was never within the jurisdiction of Nevada to hand down such a decree.[13]

J. P.

CRIMINAL PROCEDURE—MURDER—REVERSAL OF JUDGMENT BECAUSE OF COURT'S STATEMENT THAT CONSPIRACY EXISTED.—Defendants Munford, Jackson and Greene were convicted of murder in the first degree. The jury found that the former inflicted the fatal stab and that the latter two were fellow conspirators. The crime was the result of an argument over certain gambling activities which occurred at the victim's gambling house. Munford, in the company of Jackson and Greene, arrived at the deceased's apartment and within a short while, a quarrel ensued. The victim, Eason, rushed from the room and fled a few blocks with the three defendants following him. Here there was conflicting testimony as to whether the stab was already inflicted when the deceased left, or whether the crime was actually consummated at a distant spot after the three defendants had conspired to kill him. Thus, whether there was a conspiracy, became one of the most important questions of fact which the jury had to determine. Upon this point the testimony of the prosecution's witness, Bey, was vital. After repeatedly denying that he recognized the three defendants, positively identified them as three men whom he had seen leave the victim's apartment and pursue him. When asked to repeat any conversation he had overheard, defendants objected unless he could name the specific defendant who had spoken. The court overruled this objection "on the ground there is a continuing conspiracy at that particular time." The prosecution, relying on circumstantial evidence, tried to show that the crime was com-

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[10] Lefferts v. Lefferts, 263 N. Y. 131, 188 N. E. 279 (1933); Matter of Kimball, 155 N. Y. 62, 49 N. E. 331 (1898); Cross v. Cross, 108 N. Y. 628, 15 N. E. 333 (1888).

[11] The validity of a judgment could not be challenged after it became final and the issue decided therein could not be litigated again between the parties to the action or their privies. *See* Chicot County Drainage District v. Boston State Bank, 308 U. S. 371, 84 L. ed. 329 (1939).

[12] Andrews v. Andrews, 188 U. S. 14, 47 L. ed. 366 (1902). The decree was attacked by the second wife, a third party.

[13] Ammermuller v. Ammermuller, 181 Misc. 98 (1943), *decided* by Supreme Court, Special Term, N. Y. County, Dec. 13, 1943.